FILE COPY.

Office Supreme Court U. S.
FILED
APR 4 1903
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

WILLIAM L. SNYDER, EXECUTOR OF DAVID L. Snyder, deceased, plaintiff in error,
v.
BERNARD BETTMAN, COLLECTOR. } No. 230.

BRIEF FOR THE UNITED STATES.

JAMES M. BECK,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

WILLIAM L. SNYDER, EXECUTOR OF DAVID L. Snyder, deceased, plaintiff in error,
v.
BERNARD BETTMAN, COLLECTOR.
} No. 230.

BRIEF FOR THE UNITED STATES.

I.

The plaintiff in error, by his direct appeal from the circuit court, raises the single question as to whether sections 29 and 30 of the war-revenue act of June 13, 1898 (30 Stats., 448–464), are constitutional.

The essential portions of these lengthy sections are as follows:

Section 29 provides:

> That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after

the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are made subject to a duty or tax, to be paid to the United States, as follows:

(Here follows a graded tax dependent upon the amount of the estate, and the relationship of the legatee to the decedent).

Section 30 provides:

That the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee, before payment and distribution to the legatees or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued or shall accrue thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided.

Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any State or Territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators.

(Here follow further provisions to compel the executor, administrator, or trustee of the decedent's estate to comply with the provisions of law.)

II.

In the present case it appears that one David L. Snyder died in Clark County, Ohio, and by his last will "did give and bequeath unto the city of Springfield, a municipal corporation of the State of Ohio," $200,000, face value, of United States bonds, for public purposes. The petition further recites that the plaintiff, William L. Snyder, is the executor under the will of David L. Snyder, and that at the demand of the collector of internal revenue he paid the sum of $22,000 as a succession tax upon the said bequest, under protest, and he affirms, in substance, that the act of Congress, in so far as it sought to impose such a tax, is unconstitutional, because the tax is levied upon a municipal corporation, a governmental agency of the State.

III.

I concede that the city of Springfield is such a governmental agency, and the law is unquestioned that neither the United States, on the one hand, can tax the governmental agencies of the States, nor can the

States, on the other hand, tax the agencies of the Federal Government. If, therefore, this be a tax in fact upon the city of Springfield, or its property, it was illegally exacted.

The pivotal question, therefore, is, Upon what is the tax imposed? As to this I think there can be no question, since the decisions in *Perkins* v. *United States* (163 U. S., 625); *Knowlton* v. *Moore* (178 U. S., 41); *Plummer* v. *Coler* (Id., 115); *Murdock* v. *Ward* (Id., 139).

In *United States* v. *Perkins*, one Merriam, a resident of the State of New York, bequeathed all of his estate to the United States Government. The State of New York, by the act of 1892, passed prior to Merriam's death, imposed a tax "upon the transfer of any property, real or personal, of the value of $500 or over, to persons or corporations, not exempt by law from taxation on real or personal property." It was contended in behalf of the United States that such a tax upon Merriam's bequest was in effect a tax upon property of the United States, and therefore invalid. This court, in an opinion by Mr. Justice Brown, considered the nature of the tax, negatived this contention, and held (p. 628):

> In this view the so-called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; a declaration that in the exercise of that power he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain, but subject to a condition that the State has a right to impose. Certainly, if it be true that the right of testamentary disposition is

> purely statutory, the State has a right to require a contribution to the public treasury before the bequest shall take effect. *Thus the tax is not upon the property in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee.*

Again, the court say (p. 630):

> *We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it.*

Applying the principle of the *Perkins* case to the case at bar, it follows that the tax imposed by the war-revenue act is not imposed upon the property of the city of Springfield, but upon the estate of David L. Snyder, and that his bequest of $200,000 in United States bonds did not become the property of the city of Springfield until after it had been diminished by the payment of the tax, and that such tax is therefore not paid by the city of Springfield, but by the executor of decedent's estate. Indeed, it is a fair assumption that the testator had knowledge of and intended that the bequest should be thus diminished. As the testator is presumed to know the law, it must be assumed that *his intention* was that the city of Springfield should only receive the bequest after the payment of lawful tax charges, whether imposed by the State or nation. The intention of the testator, however, is

not important, for whatever such intention, the Federal Government has a right to impose upon the assets of decedent a tax before its transmission to the legatee.

Its power to do so was first assailed in *Knowlton* v. *Moore* (178 U. S., 41), in which it was ably contended that such a tax was in effect a tax upon the right of the State to regulate the manner of descents, and was for that reason invalid. This court, in a learned opinion by Mr. Justice White, carefully considered the nature of death duties, and held that the tax was not a tax upon the power of the State to regulate the devolution of property, but upon the transmission of property. It is true that in that case the court said that the tax was "a burden cast upon the recipient and not upon the power of the State to regulate," and if this statement had not been explained in the later cases, and the principle of *United States* v. *Perkins* reaffirmed, this fugitive expression in Mr. Justice White's opinion might justify the conclusion that the tax is, in fact, imposed upon the legatee, which, in the case of the city of Springfield, would unquestionably make it invalid. But there is a clear distinction between the imposition of a tax in legal contemplation and the bearing of its consequent burden. The party who in the first instance pays the tax, and who is legally liable to pay it, does not always bear its burden, for the burden is often shifted. Thus, in all excise and tariff taxes the burden is ordinarily paid by the consumer and not by the party legally liable in the first instance to

pay the tax. This single sentence in the opinion of *Knowlton* v. *Moore*, therefore, upon which the plaintiff in error in the case at bar places so much reliance, when read in connection with the previous opinion of *United States* v. *Perkins*, and the later case of *Murdock* v. *Ward*, may be interpreted as meaning that while the tax is imposed upon the estate of the decedent and not upon the legatee in contemplation of law, yet its burden does fall upon the legatee in the sense that the fund is diminished before it reaches his hands. There is no suggestion in the opinion in *Knowlton* v. *Moore* that the previous doctrine, as laid down in *United States* v. *Perkins* as to the character of the succession tax, was intended to be modified. On the contrary, the *Perkins* case is cited with approval.

In *Plummer* v. *Coler* (*supra*) and *Murdock* v. *Ward* (*supra*), the doctrine of the Perkins case was clearly reaffirmed.

In *Plummer* v. *Coler*, Plummer, a citizen of New York, bequeathed certain United States bonds to a trustee for a daughter. The State of New York sought to impose a succession tax upon this bequest, and this was resisted on the ground that United States bonds as such were not taxable. If the tax fell upon the property, this was unquestionably so. This court, in an opinion by Mr. Justice Shiras, reaffirmed the case of *United States* v. *Perkins*, and quoted from it at length.

Referring to the Perkins case, this court said (p. 130):

> It was contended that, upon principle, property of the United States was not subject to State taxation, but it was held by this court, affirming the judgment

of the courts below, that the tax was not open to the objection that it was an attempt to tax the property of the United States, *since the tax was imposed upon the legacy before it reached the hands of the legatee; that the legacy became the property of the United States after it had suffered a diminution to the amount of the tax, and that it was only upon such a condition that the legislature assented to a bequest of it.*

Again, the court say (p. 132):

One of the propositions recognized in that case applicable to the present one is that a State tax that would be invalid if imposed directly on a legacy to the United States may be valid *if the amount of the tax is taken out of the legacy before it reaches the hands of the Government—the theory of such a view apparently being that the property rights of the Government do not attach until after the tax has been paid*, or until the condition imposed by the tax law of the State has been complied with. Such is also the case in respect to the legacy to Ella Plummer Brown, as *the statute in question distinctly makes it the duty of the executor to pay the amount of the tax before the legacy passes to the legatee.*

The opinion concludes with this final statement of the nature of an inheritance tax (p. 138):

For, after all, what is an inheritance tax but a debt exacted by the State for protection afforded during the lifetime of the decedent? It is often impracticable to secure from living persons their fair share of contribution to maintain the administration of the State, *and such laws seem intended to enable to secure payment from the estate of the citizen when his final account is settled with the State.*

In *Murdock* v. *Ward, supra*, the constitutionality of the very sections of the war-revenue act, whose constitu-

tionality is now assailed, was under consideration. In that case one Jane H. Sherman, by her last will, made certain bequests and devises, and her executor, under protest, paid the tax provided for in section 29 of that act. It was held, on the authority of *Knowlton* v. *Moore*, that it was—

> within the province of the constitutional power of the United States to levy a tax upon a right of inheritance or disposition by will provided for by the laws of the State of New York.

Referring to the previous cases, in which State succession laws were considered, this court says (p. 147):

> If a State inheritance law can validly impose a tax measured by the amount or value of the legacy, even if that amount includes United States bonds, the reasoning that justifies such a conclusion must, when applied to the case of a Federal inheritance law taxing the very same legacy, bring us to the same conclusion. We must, therefore, hold that if, as held in *Knowlton* v. *Moore*, the tax imposed under the act of June 13, 1898, is not invalid as a direct, unapportioned tax, nor for want of uniformity, nor as an infringement upon the laws of the States regulating wills and descents, then the tax upon legacies or bequests, descendible under and regulated by State laws, is valid, even if such legacies incidentally are composed of Federal bonds.

Applying the principles of these cases to the case at bar, I submit that the Government has not attempted to, nor has it, taxed the city of Springfield or its property. It has simply taxed the executor of an estate, as its legal representative, for the right of transmission, and while the burden of the tax may eventually fall

upon the city of Springfield, in so far as the value of the bequest is affected or decreased by the taxation before the legacy becomes its property, yet it is the *transmission* that is taxed. The undistributed estate in the possession of the executor is taxed by both State and Nation with other charges of administration, to which all estates are subjected, and by which the value of all estates may be affected. The person taxed is the executor; the thing taxed, decedent's estate.

The legislation in question is explicit upon this point. It is the "persons having in charge or trust as administrators, executors, or trustees" who "are made subject to a duty or tax." (Section 29.) The tax or duty "shall be a lien and charge upon the property of every person who may die, as aforesaid, for twenty years, or until the same shall within that period be fully paid to and discharged by the United States," and it is the "executor, administrator, or trustee, before payment and distribution to the legatees," who shall pay to the collector the amount of the tax. (Section 30.)

Congress was, therefore, careful to follow almost the very words of the decision of this court in *United States* v. *Perkins*, by imposing a tax upon the decedent's estate in the name of the executor, and not upon the legatee.

It must, therefore, follow that as it is lawful for a State to tax a bequest to the Federal Government, the latter has equal power to tax a bequest to a State. No reasonable distinction is perceivable between the two, unless the thing taxed is the right to regulate

the manner of descents; but this view of the nature of the tax was distinctly repudiated by this court in *Knowlton* v. *Moore* (*supra*).

Respectfully submitted.

JAMES M. BECK,
Assistant Attorney-General.

()